

HOUSE BILL REPORT

HB 1118

As Reported By House Committee On:
Judiciary

Title: An act relating to the unlawful use of explosives.

Brief Description: Classifying the criminal use of explosives.

Sponsors: Representatives Orr, Scott, Shin, Dunshee, Silver, Mielke, Schoesler, Sheahan, Riley, Tate, Vance, Chappell, Ludwig, Forner, H. Myers, Johanson and Springer.

Brief History:

Reported by House Committee on:
Judiciary, February 16, 1993, DPS.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Margaret Allen (786-7191).

Background: The Washington State Explosives Act governs the possession and use of explosives. The Department of Labor and Industries approves the use of explosives. No person may manufacture, possess, store, sell, purchase, transport, or use explosives unless licensed by the department. Certain exemptions apply.

Definitions:

The act defines explosives. Small arms ammunition and primers, smokeless powder less than 50 pounds, and black powder less than five pounds are not explosives within the meaning of the act, regardless of their intended use. Smokeless powder and black powder in excess of the specified amounts are explosives, regardless of who possesses them.

The act also classifies explosives. Class A explosives include among other items, "picric acid, lead azide, and

fulminate of mercury." Potentially other chemicals exist that may be commonly used to create explosives, but those chemicals are not specifically referenced in the definition of class A explosives.

There is no definition of improvised devices that may contain explosives or other noxious agents such as gases.

Authorized Persons:

No person except "an official as authorized herein" may enter any explosives manufacturing building, magazine, or car, vehicle, or other common carrier carrying explosives. An "official as authorized herein" is undefined.

Penalties:

It is a felony to possess shells, bombs, or similar devices with the intent to use them for an unlawful purpose. However, some prosecutors reportedly have declined to prosecute offenders in possession of explosive devices or components, because of a lack of proof of the intent to use the devices or components for an illegal purpose.

It is a gross misdemeanor to manufacture, purchase, sell, use, or store any explosive without a license from the Department of Labor and Industries.

While it is unlawful for a person to abandon explosives or explosive substances, no penalty is specified.

Also, no penalty is provided for illegal entry into an area where explosives are located.

Exemptions:

The chapter does not apply to the sale and use of fireworks, signalling devices, flares, fuses, and torpedoes. This exemption does not include the "importation" or "possession" of those items.

Other Provisions:

While the act does address the immediate surrender of explosives, it does not explicitly provide for the seizure, destruction, or forfeiture of explosives. Nor does it require the reporting of lost or stolen explosives.

Summary of Substitute Bill: The Washington State Explosives Act is amended in several ways.

Definitions:

Small arms ammunition and primers, smokeless powder less than 50 pounds, and black powder less than five pounds are explosives if possessed or used for a purpose inconsistent with small arms use or other lawful purpose. Smokeless powder exceeding 50 pounds and black powder exceeding five pounds are not explosives if possessed by a licensed dealer for the sole purpose of resale.

The definition of class A explosives is changed to refer to "chemicals commonly used to create an explosion," replacing the more specific references to "picric acid, lead azide, and fulminate of mercury."

A new definition is added. The term "improvised device" means a device that is fabricated with explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals, and is designed to disfigure, destroy, distract, or harass. The term is added throughout the Washington State Explosives Act.

Authorized Persons:

Who has authority to enter manufacturing buildings, magazines, and vehicles containing explosives is clarified. No person, except the director of the Department of Labor and Industries or the director's agent, the owner, the owner's agent, any person the owner or the owner's agent permits to enter, or a law enforcement officer acting within his or her official capacity may enter any building, magazine, or vehicle that contains explosives.

Penalties:

A new offense is created. Unless otherwise allowed by the Washington State Explosives Act, a person who exhibits a device designed or assembled to convey the appearance of an explosive or improvised device, and who intends to and does frighten, intimidate, or harass a person, is guilty of a class C felony.

In addition to current restrictions on manufacture, purchase, sale, use, or storage of explosives, a person may not offer for sale, possess or transport an explosive, improvised device, or components that are intended to be assembled into an explosive or improvised device, without a license. Violation of the provision is changed from a gross misdemeanor to a class C felony. Otherwise lawful historical displays or demonstrations are exempt from the licensing requirement.

Unlawful abandonment of explosives or improvised devices is a gross misdemeanor. (The term "explosive substances" is stricken.)

Illegal entry into a building, magazine, or vehicle containing explosives is a gross misdemeanor.

Exemptions:

The provisions of the chapter do not apply to the importation, sale, possession or use of fireworks, signalling devices, flares, fuses, or torpedoes.

Other Provisions:

Seizure, destruction, or forfeiture. Explosives, improvised devices, and components possessed, manufactured, stored, sold, purchased, transported, abandoned, detonated, or used in violation of the Washington State Explosives Act are subject to seizure and forfeiture by a law enforcement agency.

Explosives, improvised devices and components may be seized if:

- (1) the seizure is incident to arrest or a search under a search warrant;
- (2) they were the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based on the act;
- (3) there is probable cause to believe they are dangerous to health or safety; or
- (4) there is probable cause to believe they were used or were intended to be used in violation of the act.

A law enforcement agency must destroy seized explosives if necessary for the public safety and welfare. Otherwise, and if the explosives are not being held for evidence, the seizure commences forfeiture proceedings.

The seizing law enforcement agency must follow specified procedures in forfeiture proceedings, including procedures for notice to any person with a known interest in the explosives. Notice must be given by personal service.

Anyone with a claim to the explosives is entitled to a hearing to challenge the forfeiture action, and may have the matter heard by a court if the value of the explosives

exceeds \$500. The seizing law enforcement agency bears the burden of proof.

A law enforcement agency must destroy forfeited explosives. When explosives are destroyed either to protect public safety or because the explosives were forfeited, the person from whom the explosives were seized has no claim against any governmental entity, agency, or employee acting within the scope of his or her employment, involved in the seizure or destruction.

The act's seizure, forfeiture, and destruction provisions are not intended to change the seizure and forfeiture powers, enforcement, and penalties available to the Department of Labor and Industries under the Washington Industrial Safety and Health Act.

Loss or theft of explosives. A person who is responsible for explosives must report theft or loss of the explosives within 24 hours of discovery to a local law enforcement agency. The law enforcement agency must immediately report the theft or loss to the Washington State Patrol and the Department of Labor and Industries.

Technical changes:

The bill makes additional changes, of a technical nature, in the act.

Substitute Bill Compared to Original Bill: More than 50 pounds of smokeless powder or more than five pounds of black powder possessed by dealers for resale are excepted from the definition of explosives. Persons putting on otherwise lawful historical displays or demonstrations need not be licensed. The seizing law enforcement agency must give notice of forfeiture proceedings by personal service of the notice on any person with a known interest in the seized explosives. The seizing law enforcement agency, rather than the person claiming an interest in the explosives, has the burden of proof in a forfeiture proceeding.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This is an important law enforcement issue. A loophole in the current Washington State Explosives Act allows people to have explosive devices such as pipe bombs.

Testimony Against: An exemption for dealers is needed. It would be illegal to hold historical displays or

demonstrations. The burden of proof should be on the government rather than the person claiming the right to seized explosives. A mailing is insufficient notice of forfeiture proceedings.

Witnesses: Representative George Orr, prime sponsor; Brian Peterson, Sheriff, Cowlitz County (for); Tim Schellberg, WASPC (for); Al Woodridge, Washington State Rifle and Pistol Association (for, with amendments); George Aiton, Washington Arms Collectors (for, with amendments); Marcus Carter (against); and Merton Cooper (against).